

WASHINGTON STATE EXECUTIVE ETHICS BOARD
2425 Bristol Court SW – 1st Floor Conference Room 148 – Olympia, WA

February 11, 2005
Regular Meeting Minutes

A. Preliminary Business

1. Roll Call

The regular meeting of the Washington State Executive Ethics Board (EEB) was called to order by Vice Chair Trish Akana at 9:10 AM. Present were Members Marilee Scarbrough, Evelyn Yenson, and Judy Golberg, recorder. Chair Paul Zellinsky participated by telephone. Also in attendance were: Interim Executive Director Kent Nakamura, Sr. Assistant Attorney General Linda Moran, Investigator Linda Stark, Investigator Sue Jones, and Compliance Analyst Mechele Linehan.

2. Approval of Agenda

Members Golberg moved, Scarbrough seconded to approve the February 11, 2005 Agenda as presented. Motion carried.

3. Approval of January 14, 2005 Minutes

Corrections to the minutes included page 2, first complete paragraph beginning with “Member Yenson commented...” in the 5th sentence that begins with “Chair Zellinsky indicated”, strike the word “Board” and substitute the word “staff” to read: “Chair Zellinsky indicated that staff vacancies needed to be...”

Page 3, 4 and 5 under Staff Report: add titles to paragraphs indicating the change of subjects. 1. Scheduling of Hearings; 2. Frequently Asked Questions; etc.

Page 6, last paragraph under the discussion of the Liquor Control Board’s policy: Add new sentence to read: “Motion was seconded and approved as amended.”

Member Scarbrough moved, Zellinsky seconded to approve the January 14, 2005 regular Meeting Minutes as amended. Motion carried.

B. Strategic Plan/Board Policies & Procedures

1. Board Policies, Board meetings

A clean copy of the policies was handed out, eliminating the redline-tracking marks.

Member Golberg asked for a correction of a typographical error in section 4.5. Recording of Proceedings. Correction: change “medial” to “media”.

Counsel Moran suggested removing subsection 5.3 “Complaints Filed Against Employees in Attorney General’s Office” until such time that policy language was written. Vice Chair Akana indicated that 5.2 “Complaints Concerning a Board Member”

could also be removed if 5.3 were deleted. By consensus, it was agreed to remove these subsections.

Member Scarbrough suggested adding “Board Policies” to the Agenda of the September meeting each year. The Board agreed that reviews and updates could be proposed at any time throughout the year, as needed.

Member Yenson moved, Scarbrough seconded to approve Members’ Conduct Policies and Procedures as amended. Motion carried.

Counsel Moran informed the Board that an annual rules review by the Board was encouraged by Governor Locke under Executive Order 97-02. Chair Zellinsky suggested that adequate time be provided for Board members to review and comment on proposed rule amendments. Members Scarbrough and Golberg agreed to serve on the rules-review ad hoc committee and work with the new Executive Director.

2. Memorandum of Understanding (MOU) with Attorney General’s Office

Vice Chair Akana suggested that the Board initiate a Memorandum of Understanding between the Board and the AG. The idea of a MOU was initially brought up at the Board’s June 2004 retreat. The purpose of the MOU is to set out the Board’s and AG’s expectations, roles, and responsibilities to each other and relationship with staff provided to the Board by the AG.

Counsel Moran provided a description on the current organization of the Board. Staff is provided to the Board by the AG and resides under the Administration Division of the AG, reporting to the Chief of Staff. The budget when the Board was first created used to be general fund, but now it is part of the administrative overhead of the AG. Staff consists of one Executive Director, one investigator, and one human resource consultant. Approximately one-tenth of an Assistant Attorney General FTE is allotted for legal counsel to the Board. An allocation of FTE for prosecution services is provided by the Governmental Operations Division. The AG has come up with creative resource-sharing options to provide additional resources, including intern and extern services.

The Board suggested that the overall structure of the office, how it operates, and how it really functions be put in writing and included in a Board manual so that staff and Board members are provided with a common framework. Vice Chair Akana has requested a copy of the new administration’s organization chart and will forward it to the Board when made available.

It was agreed that a Memorandum of Understanding will be drafted by the Board’s Chair, the new Executive Director, and the AG’s Chief of Staff. Topics for the MOU include: facilities, staffing, supervisory relationship of Executive Director and the Board’s role, budget, mutual expectations, human resource element (job descriptions, CQ, Executive Director’s annual performance evaluation), accountability, what the AG Office would be providing the Board, communications, and training. The Board asked that when the Executive Director cannot reach the Chair on media issues, for example, where consultation is needed, that the Vice Chair will instead be contacted.

Board Budget Report

Vice Chair Akana shared a copy of the EEB budget and expenditure report for the month ending 12/31/04. The Executive Director receives this report on a monthly basis from the AG fiscal office. Member Yenson added that it is the Executive Director's responsibility to monitor the budget and that Board receipt of a quarterly variance report would be useful information.

Board and New Member Orientation Manual

Mr. Nakamura will check with the Governor's office on when the next orientation will be held for new Board members. The Board agreed that an Executive Ethics Board orientation manual would be helpful for everyone. As the newest addition to the Board, Member Golberg was asked to provide her perspective on information that would be useful. Counsel Moran said she will check with other Boards on their member orientation manual. Topic areas to include in an orientation manual are the Board's role as an adjudicator, as well as enforcement issues.

Board Member Compensation

Vice Chair Akana reported that she asked the AG for an advisory opinion on the issue of compensation for Board members who are state employees, who conduct the Board's business as directed on a Saturday or evening, and whose Board work occurs outside the state employee's scheduled work hours. The Board agreed that Vice Chair Akana and other Board members who may be a state employee should be compensated for her/their time when attending Board business on weekends and evenings as the goal is to have a consistent and fair practice of compensation.

3. Handling Complaints Against EEB Members/Staff, AG Office Executives

Counsel Moran asked for guidance before proposing the options for handling complaints against EEB members, staff, the AG, or members of the AG's core leadership team. Handling complaints against these individuals may necessitate the temporary re-assignment of the Executive Director's administrative functions or the outsourcing of an investigation because of an apparent or actual conflict of interest.

The Board presented several possibilities to help with such investigations including the Legislative Ethics Board, the Public Disclosure Commission and the State Auditor's office. Historically the Board has tapped into the Legislative Ethics Board. The fourth resource would be to hire through the procurement process people with the required skills.

Counsel Moran said that the process and options for handling complaints under these circumstances will not require rule making. The Board asked Counsel Moran to put in writing the proposed options for handling complaints and present her proposal at a subsequent Board meeting.

4. Guidance to Executive Director on Subjects to Work with Chair

Chair Zellinsky first proposed having written guidance on subject matters, such as media inquiries, where the Board expects the Executive Director to consult with the Chair.

Chair Zellinsky agreed it would be better to wait and discuss communications with the new Executive Director.

Counsel Moran said while it is acceptable for the Executive Director to communicate with all Board members at the same time outside a public meeting, the Board members cannot hold discussions amongst themselves that might result in the Board taking any action outside a public meeting.

5. Training for New Government Officials

Mr. Nakamura and Counsel Moran have been contacted by the Governor's office to provide ethics training for new officials. A simplified PowerPoint presentation is being finalized. The Board will receive a copy for their input prior to its use. Other agencies have also been asking for training.

Discussion on the PowerPoint presentation, the website and other training resources took place. Ethics Advisors Harvey Gertson and Brian Jensen explained what training takes place in their agencies. Both use the EEB website in addition to other materials.

Counsel Moran will see if she can obtain a copy of the Records Retention training to see whether a similar interactive program could be created for Ethics.

6. Meeting with King County Ethics Board

Vice Chair Akana attended the King County Ethics Board meeting Saturday, January 15, 2005. Members of the Seattle Ethics and Elections Commission were also in attendance. The differences and similarities of the Boards were discussed and considerations for future joint discussions approached with the idea of developing "guiding principles" for the three jurisdictions. A copy of King County Ethics Board orientation booklet was distributed. The Board agreed to continue participating in the discussion, if possible.

A discussion on the origins of the electronic game – Ethics Challenge – took place. The rights of ownership will be investigated by staff.

C. Frequently Asked Questions

A copy of the FAQ from the Ethics Board website was in the packet with the addition of the advisory opinion on political buttons. Jeff Aguilar, webmaster, updated the site and updated its appearance. Mr. Aguilar has changed positions and will no longer be the EEB webmaster.

Vice Chair Akana has an idea for revising the Q&A written format so that it would be more user-friendly. She will bring her idea to the next meeting.

D. Staff Report

Mr. Nakamura provided an update on changes in the office staff. An email was sent to Board members regarding a COGEL conference December 4-7 in Boston. When the

time gets closer, the Board should decide which member or members should attend. Vice Chair Akana acknowledged the importance of having new Board members attend COGEL.

Follow up letters to Liquor Control Board and Everett Community College was included in Board packets. Elizabeth Olson, VP for Human Resources, Everett Community plans to attend the March 11 meeting at 10 AM to interact with the Board regarding their policy.

Hearings are set for March 14-15 (Meeks), May 10 (Tjemsland) and possibly April 26-28.

Staff has been tracking advice and contracts for review and approval and will report twice a year to provide the Board a sense of the type of issues being reviewed and from which agencies.

Mr. Nakamura said he sent an unofficial survey to ethic advisors on the use of state computers by employees to obtain training electronically. Mr. Nakamura will provide the Board with possible policy options for a formal Advisory Opinion, if one is necessary.

Mr. Nakamura provided the Board with copies of new legislation that would impact the Ethics law, although two of the bills affect only the Legislative Ethics Board.

SB 5462 changes the terms for citizen members of the Legislative Ethics Board to “unlimited” number of terms. After discussion, it was agreed unlimited terms is not a good idea but having up to two (2) terms would be an option that the Executive Ethics Board would like to explore. Mr. Nakamura will have a discussion with the Chief of Staff and the Governor’s Policy Director to find out if there is a possibility of having similar legislation for the EEB.

SB 5046 and HB 1051 relate to ethics complaints to the Legislative Ethics Board and would allow the LEB to dismiss a complaint for specified reasons and would limit the circumstances under which the AG must investigate complaints of certain ethics violations.

SB 5811 and HB 1623 relate to the life sciences and research at the Universities. These bills have already had a committee hearing. Most importantly is the fact that the bills ask for changes in the Ethics law and no one asked the EEB for input. Concern was raised that this will create two-tiered ethics standards and that the Governor’s office will set the standards based on federal standards but the EEB will have to enforce them.

The Board expressed its interest in having its views on the impact of the legislation on the ethics law shared with the Governor. Mr. Nakamura and Vice Chair Akana agreed to hold a conference call following today’s meeting with the Governor’s office. The Board wants this project to be successful without carving out whole sections of the ethics law and replacing them with an administrative process approved by the Governor’s office.

E. Lunch

Washington State Executive Ethics Board

F. Public Comments / Board Members Comments

None

G. Executive or Closed Session

At 1:20 the Board moved into executive session to receive and evaluate complaints against public employees or officers with staff and Board Counsel in attendance. At 1:25 the Board moved into closed session to consider an issue regarding personnel.

At 1:30 the Board reconvened the public meeting.

H. Miscellaneous Matters / Adjournment

Meeting was adjourned at 1:35 PM.